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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,510	10/07/2003	Michael H. Peronek	FCIE 2 13320-1	5044

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EXAMINER

MAI, TRI M

ART UNIT PAPER NUMBER

3727

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/680,510	Applicant(s) PERONEK ET AL. EB	
	Examiner Tri M. Mai	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-73 is/are pending in the application.
- 4a) Of the above claim(s) 43-50 and 66-73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 28-42 and 51-65 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/07/03</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. Claims 43-50, and 66-73 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 01/10/05.

2. Claims 28-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

“substantially straight surfaces... odd number of substantially straight surfaces, a plurality of notches, or a plurality of arcuate surfaces” is confusing. It is unclear whether the claim set forth a substantially straight surfaces... odd number of substantially straight surfaces, **or** a plurality of notches, or a plurality of arcuate surfaces. It seems that the recitation set forth the flange with odd number of substantially straight surfaces would also include a plurality of notches.

3. Claims 28, 32, 34, 42 are rejected under 35 U.S.C. 102(b) as being anticipated by JP61-930093. JP’093 teaches a molded plastic container having a upper mouth forming portion, a lower base, cylindrical sidewall, a neck having a thread 7, and a non circular anti-rotation flange having a plurality of notches and/or arcuate surfaces as claimed.

4. Claims 38, 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over ‘093 in view of Collette (4755404) or the admitted prior art. The JP093 combinations meet all claimed limitations except for the champagne bottom. Either Collette or the admitted prior art teaches that it is known in the art to provide a champagne bottom. It would have been obvious to one of

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ordinary skill in the art to provide a champagne bottom in JP093 as taught by Collette or admitted prior art the to provide an alternative bottom.

Regarding claim 40, it would have been obvious to one of ordinary skill in the art to make the container of JP093 from PET as taught by Collette to manufacture the container easily.

5. Claims 28, 32, 34, 40, and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Thompson (4273246). Thompson teaches a molded plastic container having a upper mouth forming portion, a lower base, cylindrical sidewall (col. 5, ln. 40), a neck having a thread 7, and a non circular anti-rotation flange having a plurality of notches and/or arcuate surfaces as claimed.

6. Claims 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson in view of either Collette (4755404) or the admitted prior art. Either Collette or the admitted prior art teaches that it is known in the art to provide a champagne bottom. It would have been obvious to one of ordinary skill in the art to provide a champagne bottom in Thompson as taught by Collette or admitted prior art the to provide an alternative bottom.

7. Claims 28-42, and 51-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collette (4755404) in view of either Pree (D192942) or JP432 (6-247432), or Akiyama et al. (6752284). Collette teaches a bottle having an upper mouth portion, a lower base, and a flange. Collette meets all claimed limitations except for the flange including flange with straight edges. Pree teaches that it is known in the art to provide a flange with a plurality of straight edges. It would have been obvious to one of ordinary skill in the art to provide a flange with a plurality of straight edges in JP093 as taught by Pree to provide an alternate anti slipping flange.

Alternatively, JP432 teaches that it is known in the art to provide a flange with a plurality of straight edges. It would have been obvious to one of ordinary skill in the art to provide a flange with a plurality of straight edges in JP093 as taught by JP432 to provide an alternate anti slipping flange.

Alternatively, Akiyama teaches that it is known in the art to provide a flange with a plurality of straight edges. It would have been obvious to one of ordinary skill in the art to provide a flange with a plurality of straight edges in JP093 as taught by JP432 to provide an alternate anti slipping flange.

With respect to the flange having an odd number of straight edges, it would have been obvious to one of ordinary skill in the art to provide the flange in the combinations, as set forth above, with an odd number of straight edges, specifically an heptagonal shape, to provide the desired number of edges in the flange.

8. Claims 28-37, 42, 51-60, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP093 (JP61-93093) in view of either Pree (D192942) or JP432 (6-247432). JP093 teaches a molded plastic container having an upper mouth portion, a lower base, and an anti-rotational flange at portion 9. JP093 meets all claimed limitations except for the flange including flange with straight edges. Pree teaches that it is known in the art to provide a flange with a plurality of straight edges. It would have been obvious to one of ordinary skill in the art to provide a flange with a plurality of straight edges in JP093 as taught by Pree to provide an alternate flange.

JP432 teaches that it is known in the art to provide a flange with a plurality of straight edges. It would have been obvious to one of ordinary skill in the art to provide a flange with a

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plurality of straight edges in JP093 as taught by JP432 to provide an alternate anti rotational flange.

With respect to the flange having an odd number of straight edges, it would have been obvious to one of ordinary skill in the art to provide the flange in either JP093 combinations, as set forth above, with an odd number of straight edges, specifically an heptagonal shape, to provide the desired number of edges in the flange.

Regarding claim 3, note the straight surface in Fig. 3 of Pree.

Regarding claims 28 and 43, it would have been obvious to one of ordinary skill in the art to provide a frustoconical shape in the bottle JP093 to provide an alternative shape for the bottle.

9. Claims 38-41, and 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over the JP093 combinations, as set forth above, and further in view of Collette (4755404). The JP093 combinations meet all claimed limitations except for the champagne bottom. Collette teaches that it is known in the art to provide a champagne bottom. It would have been obvious to one of ordinary skill in the art to provide a champagne bottom in JP093 as taught by Collette to provide an alternative bottom.

It would have been obvious to one of ordinary skill in the art to make the container of JP093 from PET as taught by Collette to manufacture the container easily.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (571)272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
Art Unit 3727

T.M.